

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

MICHAEL BOUCHER,)	
)	
Plaintiff)	
)	
v.)	Civil No. 98-0210-B
)	
MAINE ATTORNEY GENERAL,)	
et al.,)	
)	
Defendants)	

RECOMMENDED DECISION

Plaintiff's Complaint alleges that he has been denied dental care by officials of the Maine Department of Corrections pending payment by him of an amount due for privately contracted dental care with which he was dissatisfied. Named as Defendants in the action are Andrew Ketterer, Attorney General for the State of Maine, Martin Magnusson, Commissioner of the Maine Department of Corrections, and Maurice Landemare, the dentist with whom Plaintiff contracted for services.

Defendants Ketterer and Magnusson move for summary judgment on the grounds that they did not personally participate in promulgating the dental care policies under which Plaintiff claims to have been harmed, or in preventing Plaintiff from obtaining any necessary dental care. Defendants have presented uncontroverted evidence that decisions regarding the access to and provision of dental care, whether

medically necessary and therefore free, or elective and paid by the prisoner, are made at the particular institution in which the prisoner is housed. They each offer their own affidavits in which they deny having made any decisions, or taken any actions, relative to Plaintiff's claims.

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). Summary judgment is appropriate "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Once the moving party has presented evidence of the absence of a genuine issue, the nonmoving party must respond by "placing at least one material fact in dispute." *Anchor Properties*, 13 F.3d at 30 (citing *Darr v. Muratore*, 8 F.3d 854, 859 (1st Cir. 1993)).

Plaintiff has clearly indicated in his objection to the Motion for Summary Judgment that he does indeed seek to impose liability against these Defendants by virtue of their positions relative to employees and medical providers within the Department of Corrections. He has proffered no evidence to contradict their

assertion that they did not personally participate in decisions about Plaintiffs' dental care. It has long been established that there is no *respondeat superior* liability under section 1983. *Monell v. Department of Soc. Serv.*, 436 U.S. 658, 691 (1978). Defendants are entitled to judgment as a matter of law on Plaintiff's claims.

Conclusion

For the foregoing reasons, I hereby recommend Defendants' Ketterer and Magnusson's Motion for Summary Judgment be GRANTED.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Eugene W. Beaulieu
United States Magistrate Judge

Dated on March 3, 2000.